IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 11638 of 2007(I)

PETITIONER:

K.K.RAVI,S/O.KUTTAN AGED 53 YEARS,
RESIDING AT AMBAKKATTU DHIRA,PANDANKARY P.O,
EDATHUA,ALAPPUZHA.

BY ADV. SRI.VISHNU.R

RESPONDENTS:
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1. V.D.KUTTAPPAN,S/O.DEVASIA AGED 50 YEARS,
VEENATTU VEEDU,PANDANKARY P.O,EDATHUA,ALAPPUZHA.

2. KERALA STATE REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KEALA,ERNAKULAM.

BY GOVERNMENT PLEADER SRI.C.K. SURESH.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO.11638 OF 2007-I

Dated this the 29th day of May, 2007

JUDGMENT

Should the notice of demand under proviso (b) to Sec.138 of the Negotiable Instruments Act be issued such that the drawer shall receive the notice within the period of 30 days? Is it sufficient if such notice is put into post within the said period of 30 days? How is the expression "by giving a notice in writing ..... within thirty days of the receipt of information" in proviso (b) to Sec.138 of the Negotiable Instruments Act to be understood? Does the observation in **Madhu v. Omega Pipes Ltd.,** (1994(1) KLT 441) that such notice must be despatched "reasonably ahead of the expiry of fifteen days" oblige the complainant to despatch such notice in such time as to ensure receipt within 30 days? These are the interesting questions that arise for consideration in this case.

2. Fundamental facts are not in dispute. The cheque

dated 29/4/05 for Rs.80,000/- was dishonoured on 3/5/05 and intimation was given of such dishonour on the same day. Notice of demand dated 1/6/05 was issued on 1/6/05. It was put into post on 1/6/05 and was received by the drawer on 4/6/05. If it is sufficient that despatch of the notice is made within 30 days, the notice is sufficient and proper. On the contrary, if despatch of the notice must be so made as to ensure receipt within 30 days, we will further have to consider the question whether a notice despatched on 1/6/05 would have ordinarily reached the complainant on or before 2/6/05.

3. Provisos (b) and (c) to Sec.138 of the Negotiable Instruments Act are relevant. I extract the said clauses:

> "138. **Dishonour of cheques for insufficiency, etc., of funds in the account.--**
>
> x x x x x x x. Provided that nothing contained in this section shall apply unless--
>
> (a) x x x x x x x x x x
>
> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in

> writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
>
> (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.
>
> (emphasis supplied)

4. A question was raised whether receipt of the notice must be insisted within the period (15 days as per the law at the relevant time) in **Madhu v. Omega Pipes Ltd.,** (1994(1) KLT 441). His Lordship Mr. Justice K.T. Thomas clearly held that the expression “give notice” is not synonymous with “receipt” of the notice and in these circumstances, it would be sufficient if despatch of the notice is made within the stipulated period and the receipt by the drawer is after the said period. But His Lordship in para-6 of the said decision posed the following

question and finally answered the same in para-7 in the following words:

> "6. ..... Is it enough that he sends it just two or three days before the end of the said period since the postal authority would take the notice to the address with reasonable despatch and promptitude?
>
> 7. ..... Hence the realistic interpretation for the expression "giving notice" in the present context is that if the payee has despatched notice in the correct address of the drawer reasonably ahead of the expiry of fifteen days, it can be regarded that he made the demand by giving notice within the statutory period."

5. The learned counsel for the petitioner contends that to fall within the dictum in **Madhu v. Omega Pipes Ltd.,** (1994(1) KLT 441) the complainant must have issued (put in post) the notice well prior to 3/5/05 to ensure its receipt before 3/5/05. The contention hence is that it is not enough if the notice is sent within 30 days; but it must be sent within 30 days to ensure

receipt within such period of 30 days.

6. The expression “give” must admit many shades of meanings. In former days the expression “giving” could have been treated as synonymous with the expression “taking” or “receipt”. “Giving” is the process of which “receipt” is the culmination. In a one to one personal transaction of giving and taking both acts fuse in the same conduct, “giving” being the commencement of the process and “receipt/taking” the simultaneous final point of that transaction. But life presents myriad situations where there can be a gap of time between the act of giving such a notice and the act of receiving/taking. Yes, the expression “giving” may include the acting of taking also at the end of it in a normal case; but there may be many situations where an inevitable gap of time and space may be there between the two acts. Law cannot be unequal to life. Interpretation must meet the challenge of law – to conform to the practical realities of life. The interpreter cannot be a mere die hard linguist. He must harmonise the inherent limitation of semantics to the practical realities of life as also the challenges before law. In doing so legislative goals, dreams and vision must be imbibed

by the interpreter. He must resonate to the frequency of the legislature.

7. While proviso (b) to Sec.138 of the Negotiable Instruments Act speaks of giving the notice, proviso (c) refers to the act of receipt. The different acts contemplated under the provisos (b) and (c) have to be performed within the time specified in those provisos. Inevitably and unmistakably we find that the law did contemplate notice in writing to be issued by post. Sec.94 of the Negotiable Instruments Act speaks of the modes in which notice has to be given and notice by post is a perfectly legal method by which notice can be given. I extract Sec.94 of the N.I. Act below:

> "94. **Mode in which notice may be given.--** Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment that the

> instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.
>
> If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid."

The legislature when it enacted, Sec.138 of the Negotiable Instruments Act was evidently conscious of Sec.94 which permitted and did mandate the giving of notice by post. In a case where notice is not given directly and is given through the agency of post/courier etc., the legislature was aware of the inevitability of the gap of time between the act of giving and the act of receiving. This has realistically been taken note of in provisos (b) and (c) when different points of time were fixed for giving of notice and to comply with the demand in such notices after receipt of that notice. The conclusion appears to be inevitable, in these circumstances, that to constitute the act of

giving in Sec.138(b) it is enough if notice in writing is put into post before the expiry of 30 days. Even if it were done immediately prior to mid night on the 30th day, that would be sufficient compliance of the mandate of Sec.138(b) of the Negotiable Instruments Act. So far as the period of limitation for payment under proviso (c) is concerned, it is the date of receipt of the said notice which is crucial and vital. His Lordship Mr. Justice K.T. Thomas was not concerned in **Madhu v. Omega Pipes Ltd.,** (1994(1) KLT 441) with the situation which we have on hand at present. The question raised in para-6 and the answer given in para-7 do eminently convey this fact. In holding that the notice has to be despatched "reasonably ahead of the period", his Lordship evidently had only intended that the rubicon at the end of the period fixed (i.e., 15 days then) shall not be crossed. It would therefore be, according to me, unreasonable and myopic to spell out a dictum from the said observations that it is not enough if notice is put into post within the period of 30 days and it must be put into post in such time so that receipt within 30 days can be ensured. That would be against the dictum in **Madhu v. Omega Pipes Ltd.,** (1994(1)

KLT 441) where it is clearly held that the date of receipt is not crucial or relevant and it is the date of giving – i.e., despatch of the notice, which is crucial and vital when we consider whether notice has been given in time.

8. I do, in these circumstances, come to the conclusion that notice need be given within 30 days under proviso (b) to Sec.138 and if notice is despatched before the expiry of 30 days by post/courier or other means, that would be sufficient compliance of proviso (b) to Sec.138 of the Negotiable Instruments Act.

9. That being the answer to the question of law raised, the petitioner does not have any ground to get the prosecution against him quashed by invoking the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C.

10. In the result, this writ petition fails and is dismissed.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge